

REMARKS

Favorable consideration and allowance are respectfully requested for claims 1-6 in view of the following remarks.

The rejection of claims 1-6 under 35 U.S.C. § 103 as obvious over DE 198 22 944 (equivalent to US 6,380,275) and over US 6,080,799 and 6,380,275 (Kruecke et al.) are respectfully traversed.

The present claims are directed to a noncombustible premix. None of the cited references teach or suggest a noncombustible premix

Although the Office Action notes the recitation in the preamble that the premix in must be noncombustible, the Action appears to give no weight to this limitation, see page 6 of the recent Office Action. The Office Action indicates that Kruecke et al. is not distinguished absent “. . . language in the claims being drafted to exclude such combustible materials.” Where a claim begins with the words “A noncombustible premix”, the claim necessarily excludes any and all combustible mixes. The Examiner is respectfully requested to reconsider his position that the claims do not exclude combustible materials.

The ‘799 Patent teaches that a blowing agent mixture of HFC 365mfc and HFC134a, HFC227 or HFC245 can be classified as incombustible. The reference does not teach, however, that a premix made from such blowing agents can be incombustible. If a critical amount of blowing agent is exceeded, the entire premix is combustible as a result of the low flash point, even though the blowing agent and the polyol themselves are not combustible.

The present claims relate to inventive noncombustible stable premixes. These premixes have no flash point even at a blowing agent content of even more than 4 weight percent in the system.

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None of the cited references teaches or provides any suggestion or motivation to try to arrive at a noncombustible premix. Further, even assuming a person of skill in the art were to try to create a non-combustible premix, there is nothing to suggest to that person how they might arrive at the claimed non-combustible premix or even that a non-combustible premix is possible. A person of skill in the art would not have expected or foreseen that a premix, as claimed, would be non-combustible. Accordingly, the discovery of non-combustible premixes amounts to an unexpected result.

For these reasons, it is believed that the obviousness rejections cannot be properly maintained. Reconsideration and withdrawal of these rejections are respectfully requested.

The nonstatutory double patenting rejection of claims 1-6 over US 6,380,275 is respectfully traversed. The relevance of the '275 Patent is discussed above, and again, it is noted that the reference, including the claims and the specification, does not teach or suggest a noncombustible premix as is presently claimed. Further, the present record lacks any showing of a motivation to a person of skill in the art to try to arrive at a noncombustible premix. Accordingly, the claims of the present application are not obvious variants of the claims of the '275 Patent and reconsideration and withdrawal of the double patenting rejection are respectfully requested.

CONCLUSION

In view of the foregoing, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

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If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #037110.52632US).

Respectfully submitted,

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